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09/819,605	03/29/2001	Tomoyuki Kawasoe	IWA-168-USAP	4189

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Ronald R. Snider
Snider & Associates
P.O. Box 27613
Washington, DC 20038-7613

EXAMINER
KOSS, ANN MARIE

ART UNIT	PAPER NUMBER
1751	3

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/819,605	KAWASOE ET AL.	
	Examiner	Art Unit	
	Ann-Marie Koss	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 March 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-81* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-57 and 60-81* is/are rejected.

7)☒ Claim(s) *58 and 59* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Specification

1. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: the term "thickner" is terminology that is different from that which is generally accepted in the art to which this invention pertains. Examiner further recommends to the applicant that the term "dropping" used in the context of "dropping from hair" throughout the specification be changed to read as "dripping from hair."

Applicant is required to provide a clarification of this matter or correlation with art-accepted terminology so that a proper comparison with the prior art can be made. Applicant should be careful not to introduce any new matter into the disclosure (i.e., matter which is not supported by the disclosure as originally filed).

2. The disclosure is further objected to because of the following informalities:

a. On page 11, in line 4 (counting the formula as one (1) line), the symbol "l" in formula (2) is unclear because it is defined as "a number from 1 to 500" in which the "1" and the "l" are identical in appearance;

b. Also on page 11, line 14 lacks proper punctuation;

c. On page 17, line 11 lacks proper punctuation;

d. On page 27, line 16 lacks proper indentation of the paragraph;

e. On page 29, in line 17 there is improper spacing in the term "sample25";

f. On page 29, line 27 lacks proper indentation of the paragraph;

g. And throughout the specification, the term "glycollic" appears misspelled.

Appropriate correction is required.

y

dictionary says "glycolic" or "glycollic"

Claim Objections

3. Claim 79 is objected to because of the following informalities: the term "dying" in line 1 of the claim is inappropriate. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-81 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The terms "complex nucleus" and "complex" lack a reasonable degree of particularity and distinctness. Thus, it becomes unclear when the same term is used to describe an entity as well as the entity's function. While applicant may be his or her own lexicographer, the applicant has failed to express with suitable clarity what is the claimed invention in terms acceptable in the art. Therefore, clarification is required.

6. In addition, in claims 1-19, and 73-81, the term "hair dye fixative" lacks a reasonable degree of particularity and distinctness which distinguishes the entity from a "hair dye" as claimed. While applicant may be his or her own lexicographer, the applicant has failed to express with suitable clarity what is the claimed invention in terms acceptable in the art. Is the "hair dye fixative" used to shape hair or is it merely a medium which contains a hair dye composition?

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 21-57, and 60-81 rejected under 35 U.S.C. 103(a) as being unpatentable over Dias et al. (U.S. Patent No. 6,309,426) in view of Abe et al. (U.S. Patent No. 6,197,318).

Dias et al. teaches a hair coloring composition of low pH which can contain a multivalent metal ion including aluminum (see col. 9, line 52-57, col. 24 line 4-11 and 42-54); direct action dyes (i.e. acid dyes), metal chelate or metallic dyes (see col. 19 line 51-col. 20 line 10); glycolic and lactic (α-hydroxyisopropionic acid) (see col. 22 line 62 through 67, and col. 23 line 31-41); thickeners (see col. 25 line 51-66); benzyl alcohol (see col. 31 line 62); hair conditioning agents such as silicones (see col. 32 line 22); and solvents such as ethanol, isopropanol, n-propanol, and butanol (see col. 26 line 13-15). Dias et al. further teaches that conventional hair dyeing compositions comprise at least two separately packaged components and in order to facilitate the hair dyeing process these separately packaged components are generally admixed just prior to application of the coloring composition to the hair (see col. 1 line 58-65).

Dias et al. however fails to teach a composition for treating hair which comprises xyloglucan as a thickener and an acid dye.

The secondary reference of Abe et al. teaches external-use compositions for treating hair which contains an acid dye and xyloglucan in both 2.0 % and 4.0 % by weight of the total composition (see Example B9 and D7). Abe et al. further discloses that the composition has superior salt tolerance in a comparative example that shows the addition of NaCl (see Table E2).

Therefore, in view of the teaching(s) of Abe et al., one skilled in the art would be motivated to modify the primary reference by combining a metal complex with an acid dye in a composition for the treatment of keratin fibers that contains xyloglucan as a thickener and would expect the composition to act similarly when utilized to dye hair with an oxidization dye of low

pH, a metal complex and a thickener. Such a modification would have been obvious to one of ordinary skill at the time the invention was made to utilize a metal complex with an acid dye composition thickened by xyloglucan as disclosed by Abe et al. and would expect to have similar properties.

Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to formulate a composition and a method for dyeing hair which entails combining a metal complex with an acid dye and a xyloglucan thickener, optimize the proportions of ingredients through routine experimentation for best results, then package the composition in a two compartment kit because such a composition falls within the scope of those as taught by Dias et al. and Abe et al. Also, the prior art has made the suggestion to use any amount of acids in order to maintain a specified pH range, as well as metal ions and ion sequestrates. Therefore, as to optimization results, a patent will not be granted based on the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results that properly rebuts the prima facie case of obviousness.

Allowable Subject Matter

10. Claims 58 and 59 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Neither Dias et al. nor Abe et al., alone or in combination, teach a hair dye in which an aromatic alcohol is contained in a separate composition from the non-aromatic alcohol solvents.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's(s) disclosure. These references are considered cumulative to or less material than those discussed above.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann-Marie Koss whose telephone number is (703) 305-3176. The examiner can normally be reached on Mondays-Fridays 7:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-6078 for regular communications and (703) 872-9310 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

amk
April 3, 2002

Lorraine M. Kincaid
LORRAINE KINCAID
PRIMARY EXAMINER